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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,067	12/11/2001	Patrick W. Gauldin	2690/1	7264
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SCHWARTZ LAW FIRM, P.C. 6100 FAIRVIEW ROAD SUITE 530 CHARLOTTE, NC 28210				
EXAMINER OCAMPO, MARIANNE S				
ART UNIT		PAPER NUMBER		
1723				

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

Application No.

10/015,067

Applicant(s)

GAULDIN ET AL.

Examiner

Marianne S. Ocampo

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Previously Indicated Allowable Subject Matter***

1. The indicated allowability of original claims 10 - 11 and 14 - 15, which at least the subject matter of original claims 11 & 15, have been incorporated into amended claims 1 and 12, is hereby withdrawn. Upon further examination of the disclosure of the previously applied primary reference Morris et al. (US 6,531,059), the subject matter (i.e. opposing side panels attached to the backsplash and respective side frame members in original claims 11 & 15 and the backsplash comprising a lower splash panel as in claim 9) which was previously indicated allowable, are found to be taught by the reference. The indicated allowability of claims 10 and 14 is withdrawn in view of the newly discovered reference to Morris et al. (US 6,106,707). Rejections based on the newly cited reference and the previously applied Morris et al. (059) prior art follow.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who

has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1 – 4, 7 and 9 are rejected under 35 U.S.C. 102(e) and (a) as being anticipated by Morris et al. (US 6,531,059B1).

3. With respect to claim 1, Morris et al. disclose a silt filtration system adapted for placement at an inlet of a storm water catch basin (140) and cooperating with a grate (150) located adjacent a street curb (146) at a mouth (144) of the inlet to separate silt and debris entrained in storm water entering the catch basin (140), said system comprising:

- a frame (210, 110) adapted for residing between the grate (150) and the mouth (144) of the inlet, and the frame having (the term “having” has been considered to convey the same meaning (i.e. open ended) that the conventional transitional phrase “comprising” conveys) an elongated front, rear and opposing side frame members (211, 212, 214, 216, or 111, 112, 114 and 116),

- a filtration member (120, 220, 310-320) supported within said frame (210, 110) and arranged to filter storm water entering the catch basin (140) through the grate (150); and

- a backslash (not shown and could include portions 232 or 234 in figs. 2 & 11, or in another embodiment formed by 510 or 514 of 110) attached to (at least) the rear frame member (which could be either 214 or 211 of 210 or 114 or 111 of 110) extending upwards by a few inches as in col. 5, lines 56 – 59 and adapted for extending outwardly from the grate (150) and upwardly into an open curb space between the grate (150) and the curb such that storm water splashing over the grate and into the curb space is deflected by the backslash into the filtration medium within said frame, as in col. 5, lines 56 – 65; and

- opposing side splash panels (those extending radially above side frame members 216 & 212) attached to the backslash (each attached to at least at one corner thereof in the vicinity of the rear/front frame member 214 or 211) and respective side frame members (216 & 212, respectively) to further deflect storm water into the filtration medium within the frame (210, 110), as in figs. 1 – 3, 5 & 11 and in cols. 4 – 13. (note: in fig. 5, the backslash could be those frame members (portions of 128 & 510 or 514) extending above 114 or 118 which would have to be modified to extend a few inches upward according to col. 5, lines 56 – 65 and the opposing side splash panels would be defined by the wall portions extending radially right above frame members 112 & 116 including 512 & 516. Furthermore, the connection or “attachment” of the side splash panels to the backslash and the side frame members forms a unitary structure and therefore, despite the side splash panels being not wholly or intimately/directly attached to the backslash itself, they (side splash panels) are still considered attached to the backslash via

their attachment to the side frame members which is attached to the rear frame member which is then attached to the backsplash).

4. Concerning claim 2, Morris et al. have disclosed the limitations of claim 1 above. Morris et al. also disclose the filtration medium (310, 365) comprising a silt bag (i.e. bag-shaped basket filter formed of reinforced cloth or mesh, 365), as in fig. 3 and in col. 8.

5. With regards to claim 3, Morris et al. have disclosed the limitations of claim 2 above. Morris et al. further disclose the system further comprising cooperating front and rear support rods (130, 830) extending between the opposing side frame members for suspending the silt bag (365) from said frame, as in figs. 1 – 3.

6. Regarding claim 4, Morris et al. have disclosed the limitations of claim 3 above. Morris et al. disclose the silt bag (365) comprising open-ended front and rear sleeves formed along a top marginal portion thereof for receiving respective front and rear support rods (130), as in figs. 1 – 3.

7. Concerning claim 7, Morris et al. have disclosed the limitations of claim 1 above. Morris et al. also disclose the frame members (formed by structure 110 members including 128 & 111, 114, 112 & 116) comprising angle irons, as in figs. 1 & 5.

8. Regarding claim 9, Morris et al. have disclosed the limitations of claim 1 above. Morris et al. also disclose the backsplash (which could either be 232 or formed in the place of 232 in fig. 11, such as extra panel disclosed in col. 5, lines 56 – 59 extending upwards) comprising a lower splash panel (which would be the portion directly connected to the topmost edge of frame member 214) attached to the rear frame member (214) and extending outwardly therefrom at an angle greater than 90 degrees and less than 160 degrees relative to a notional plane extending through the frame members (front, rear and side of 210), as in figs. 2 and 11.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 8 and 12 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris et al. (059).

11. With respect to claim 8, Morris et al. have disclosed the limitations of claim 1 above. Morris et al. further disclose the system comprising at least one loop which can function as a lift

eye (820 at the topmost end of 830) attached to the frame (211, 210) which is capable of receiving a lift hook used to remove the frame and filtration medium from the inlet of the catch basin, as in fig. 8.

12. Concerning claim 12, Morris et al. disclose a silt filtration system adapted for placement at an inlet of a storm water catch basin (140) and cooperating with a grate (150) located adjacent a street curb (146) at a mouth (144) of the inlet to separate silt and debris entrained in storm water entering the catch basin (140), said system comprising:

- a frame (210, 110) adapted for residing between the grate (150) and the mouth (144) of the inlet, and the frame having (the term “having” has been considered to convey the same meaning (i.e. open ended) that the conventional transitional phrase “comprising” conveys) an elongated front, rear and opposing side frame members (211, 212, 214, 216, or 111, 112, 114 and 116),

- a filtration member (120, 220, 310-320) in the form of a silt bag (365) supported within the frame (210, 110) and arranged to filter storm water entering the catch basin (140) through the grate (150); and

- a backsplash (not shown and could include portions 232 or 234 in figs. 2 & 11, or in another embodiment formed by 510 or 514 of 110) attached to (at least) the rear frame member (which could be either 214 or 211 of 210 or in another embodiment, 114 or 111 of 110) extending upwards by a few inches as in col. 5, lines 56 – 59 and adapted for extending outwardly from the grate (150) and upwardly into an open curb space between the grate (150)

and the curb such that storm water splashing over the grate and into the curb space is deflected by the backsplash into the filtration medium within said frame, as in col. 5, lines 56 – 65; and

- opposing side splash panels (those extending radially above side frame members 216 & 212) attached to the backsplash (each attached to at least at one corner thereof in the vicinity of the rear/front frame member 214 or 211) and respective side frame members (216 & 212, respectively) to further deflect storm water into the filtration medium within the frame (210, 110), as in figs. 1 – 3, 5 & 11 and in cols. 4 – 13. (note: in fig. 5, the backsplash could be those frame members (portions of 128 & 510 or 514) extending above 114 or 118 which would have to be modified to extend a few inches upward according to col. 5, lines 56 – 65 and the opposing side splash panels would be defined by the wall portions extending radially right above frame members 112 & 116 including 512 & 516. Furthermore, the connection or “attachment” of the side splash panels to the backsplash and the side frame members forms a unitary structure and therefore, despite the side splash panels being not wholly or intimately/directly attached to the backsplash itself, they (side splash panels) are still considered attached to the backsplash via their attachment to the side frame members which is attached to the rear frame member which is then attached to the backsplash), and

- first and second loops (820 shown in detail in fig. 8, one at 211 and another one would be on the opposing side frame 216, as in fig. 2) which can function/capable of use as lift eyes attached to respective side frame members (211 & 216, respectively) and adapted for receiving lift hooks to remove the frame (210) and the silt bag (365, 300) from the inlet of the catch basin.

13. With respect to claim 13, Morris et al. have disclosed the limitations of claim 12 above. Morris et al. also disclose the backsplash (which could either be 232 or formed in the place of 232 in fig. 11, such as extra panel disclosed in col. 5, lines 56 – 59 extending upwards) comprising a lower splash panel (which would be the portion directly connected to the topmost edge of frame member 214) attached to the rear frame member (214) and extending outwardly therefrom at an angle greater than 90 degrees and less than 160 degrees relative to a notional plane extending through the frame members (front, rear and side of 210), as in figs. 2 and 11.

14. Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris et al. (059) in view of Morris et al. (US 6,106,707).

15. With regards to claims 10 and 14, Morris et al. (059) have disclosed the limitations of claim 9 and 13, respectively above. Morris et al. (059) fail to disclose the backsplash further comprising an upper splash panel formed at an angle greater than 90 degrees and less than 160 degrees to the lower splash panel.

16. Morris et al. (707) teach a silt filtration system, similar to that of Morris et al. (059), in which the filtration system of Morris et al. (707) includes a backsplash (150) attached to a rear frame member (112, 160), wherein the backsplash comprises a lower splash panel (upstanding wall portion of 150 directly attached to 160) and an upper splash panel (uppermost portion of 150) formed at an angle greater than 90 degrees and less than 160 degrees to the lower splash panel, as in figs. 1 & 4 and col. 5.

It is considered obvious to one of ordinary skill in the art at the time of the invention to modify the backplash of Morris et al. (059) by adding the embodiment taught by Morris et al. (707), in order to provide an alternative and improved design for the backplash which provides additional frame support for more stability of the filtration system, at the same time provide a flow guide for deflecting/guiding overflow back into the filtration medium of the filtration system (see col. 5).

***Response to Amendments and Arguments***

17. Applicant's amendments and incorporation of previously indicated allowable subject matter of claims 11 and 15 into the independent claims 1 and 12 to advance prosecution of this instant application, is greatly appreciated. However, further consideration and analysis of the primary reference, Morris et al., applied in the last office action, brought to attention remaining relevant teachings/disclosure which are now applied against the remaining pending claims. Furthermore, in light of the combination of the teachings of the primary reference and the newly cited reference, Morris et al. (US 6,106,707), the previously indicated allowability of claims 10 and 14 are also being withdrawn.

***Conclusion***

18. This action is **NON-FINAL**.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne S. Ocampo whose telephone number is (703) 305-1039. The examiner can normally be reached on Mondays to Fridays from 8:30 A.M. to 4:30 P.M..

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (703) 308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

21. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

*msd*  
M.S.O.

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